

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRYAN HAMILTON,

Plaintiff,

vs.

No. CIV-09-0080 KBM/LAM

**DONALD ANDERSON and
SALLY ANDERSON,**

Defendants.

**ORDER DENYING DEFENDANTS' MOTION
FOR SANCTIONS FOR CONTINUED VIOLATIONS OF
THE RULES OF PROFESSIONAL CONDUCT**

THIS MATTER is before the Court on *Defendants Donald and Sally Anderson's Motion for Sanctions for Continued Violations of the Rules of Professional Conduct* (Doc. 133) (hereinafter, "***Motion***"). The Court has considered the ***Motion*** (Doc. 133), Plaintiff's response (Doc. 138) (hereinafter, "***Response***"), Defendants' reply (Doc. 141) (hereinafter, "***Reply***"), and the relevant law. Furthermore, the Court heard the parties' arguments at a telephonic motion hearing on March 31, 2010. *See Clerk's Minutes* (Doc. 151). For the reasons stated at the hearing and herein, the Court will DENY Defendants' ***Motion*** (Doc. 127).

This ***Motion*** is an extension of *Defendants Donald and Sally Anderson's Motion to Reopen Discovery for Limited Purpose of Deposing Kate Eaton and for Sanctions* (Doc. 127),¹ in which Defendants claimed that Plaintiff's counsel, Mr. Eaton, violated the Rules of Professional Conduct (hereinafter, "Rules") by improperly contacting a named party who was represented by counsel, and witnesses. *Document 127* at 2. In the motion at bar, Defendants assert that Mr. Eaton continued to

¹ In an order filed concurrently herewith, and because the Court found that the disputed contacts did not prejudice Defendants Anderson, the Court denied the motion. *Order Denying Defendants' Motion to Reopen Discovery* (Doc. 155).

violate the Rules by representing to the Court, at a telephonic status conference on February 12, 2010, that his private investigator had spoken with a potential witness, Ken James, that Mr. James was present on the day of the accident underlying this action, and that Mr. James had talked with witnesses present at the scene of the accident. ***Motion*** (Doc. 133) at 2. Defendants present an affidavit from Mr. James that indicates that Mr. James was not present on the day of the accident and was, in fact, out of town. ***Motion*** Ex. A *Affidavit of Kenneth James* (Doc. 133-2) at 1. Defendants conclude that Mr. Eaton must have lied to the Court, which would violate the Rules and, therefore, they request that the case be dismissed. ***Motion*** (Doc. 133) at 3, 5. Mr. Eaton, on the other hand, denies that he lied to the Court and presents an electronic mail message from his investigator on which he relied in making the disputed representations. ***Response*** (Doc. 138) at 3; Ex. 1 *E-mail Message* (Doc. 138-2) at 1.

Defendants have cited to no authority, and the Court has found no authority, to support their position that violation of the Rules warrants dismissal of a case. Even if Defendants had cited to such authority, the evidence does not show that Mr. Eaton intentionally lied or misled the Court. At the telephonic hearing on this and other related motions, the Court did not find exceptional circumstances to warrant the extreme relief of dismissal of the case as requested by Defendants and advised that their motion would be denied. ***Clerk's Minutes*** (Doc. 151) at 3.

IT IS THEREFORE HEREBY ORDERED that *Defendants Donald and Sally Anderson's Motion for Sanctions for Continued Violations of the Rules of Professional Conduct* (Doc. 133) is **DENIED**.

IT IS SO ORDERED.

Lourdes A. Martinez
THE HONORABLE LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE